

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1187 Mental Health and Substance Use Disorders
SPONSOR(S): Children, Families & Seniors Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Children, Families & Seniors Subcommittee		Gilani	Brazzell

SUMMARY ANALYSIS

The PCS for HB 1187 incorporates early interventions and peer support in the treatment and recovery of individuals affected by mental illness and substance use disorders. Specifically, the bill:

- Encourages the use of First-Episode Psychosis Programs, which use coordinated specialty care principles to provide early interventions for children and young adults exhibiting early symptoms of psychosis;
- Encourages the use of peer specialists to assist an individual's recovery from mental illness or substance use disorder; and
- Requires DCF to develop and implement a training program for peer specialist certification. A peer specialist must be certified, except in limited circumstances, in order to provide DCF-funded support services.

Individuals seeking employment as peer specialists often have crimes related to their behavior health issues. Those may present barriers to their employment due to background screening requirements in statute. Chapter 435, F.S., contains standard procedures for criminal history background screening of certain prospective employees, including some seeking employment with mental health and substance abuse treatment providers. If an individual has committed an offense listed in ch. 435, F.S., he or she must be disqualified from employment, unless he or she obtains an exemption from disqualification from the appropriate agency. The bill amends background screening requirements for mental health and substance abuse treatment provider personnel, including peer specialists, by:

- Requiring a level 2 background screening for peer specialists with direct contact with individuals receiving services, and including the screened offenses enumerated in s. 408.809, F.S.;
- Expanding the screened offenses for owners, directors, and chief financial officers of a certified recovery residence seeking certification to include those enumerated in s. 408.809, F.S.;
- Expanding the crimes for which an individual can receive an exemption from disqualification without the statutorily imposed waiting period, if they are working only with individuals 13 years of age and older;
- Requiring DCF to render a decision on an application for exemption from disqualification within 60 days after DCF receives the complete application;
- Allowing an individual to work under supervision for up to 90 days while DCF evaluates his or her application for an exemption from disqualification, so long as it has been five or more years, or three or more years in the case of a certified peer specialist or individual seeking certification as a peer specialist, since the individual completed all non-monetary conditions associated with his or her most recent disqualifying offense; and
- Granting the head of the appropriate agency authority to grant an exemption from disqualification which is limited solely to employment related to providing mental health and substance abuse treatment.

The bill has a negative, likely insignificant, fiscal impact on DCF and AHCA.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mental Illness

Mental health is a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to contribute to his or her community.¹ The primary indicators used to evaluate an individual's mental health are:²

- **Emotional well-being-** Perceived life satisfaction, happiness, cheerfulness, peacefulness;
- **Psychological well-being-** Self-acceptance, personal growth including openness to new experiences, optimism, hopefulness, purpose in life, control of one's environment, spirituality, self-direction, and positive relationships; and
- **Social well-being-** Social acceptance, beliefs in the potential of people and society as a whole, personal self-worth and usefulness to society, sense of community.

Mental illness is collectively all diagnosable mental disorders or health conditions that are characterized by alterations in thinking, mood, or behavior (or some combination thereof) associated with distress or impaired functioning.³ Thus, mental health refers to an individual's mental state of well-being whereas mental illness signifies an alteration of that well-being.

Mental illness affects millions of people in the United States each year. One in five adults experiences mental illness in a given year,⁴ and one in five children ages 13-18 have or will have a serious debilitating mental illness at some point during their life.⁵ Half of all lifetime cases of mental illness begin by age 14, and scientists are discovering that changes in the body leading to mental illness may start much younger, before any symptoms appear.⁶ Suicide is the third leading cause of death in youth age 10 to 24 and the tenth leading cause of death in adults, and research indicates that 90 percent of people who die by suicide have an underlying mental illness.⁷

Substance abuse also affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.⁸ Substance abuse disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.⁹ Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.¹⁰ Brain imaging studies of

¹ WORLD HEALTH ORGANIZATION, *Mental Health: Strengthening Our Response*, <https://www.who.int/news-room/fact-sheets/detail/mental-health-strengthening-our-response> (last visited Mar. 15, 2019).

² CENTERS FOR DISEASE CONTROL AND PREVENTION, *Learn About Mental Health*, <http://www.cdc.gov/mentalhealth/basics.htm> (last visited Mar. 15, 2019).

³ Id.

⁴ NATIONAL ALLIANCE ON MENTAL ILLNESS, *Mental Health Facts in America*, <http://www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf> (last visited Mar. 15, 2019).

⁵ NATIONAL ALLIANCE ON MENTAL ILLNESS *Mental Health Facts: Children & Teens*, <http://www.nami.org/NAMI/media/NAMI-Media/Infographics/Children-MH-Facts-NAMI.pdf> (last visited Mar. 15, 2019).

⁶ NATIONAL INSTITUTE OF MENTAL HEALTH, *Children and Mental Health*, <https://www.nimh.nih.gov/health/publications/treatment-of-children-with-mental-illness-fact-sheet/index.shtml> (last visited Mar. 15, 2019).

⁷ *Supra* note 5.

⁸ WORLD HEALTH ORGANIZATION, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Mar. 16, 2019).

⁹ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Mar. 16, 2019).

¹⁰ NATIONAL INSTITUTE ON DRUG ABUSE, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Mar. 16, 2019).

persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.¹¹

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance abuse disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.¹² The most common substance abuse disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.¹³

Mental illness and substance abuse commonly co-occur. Approximately 7.9 million adults have co-occurring disorders.¹⁴ In fact, more than half of all adults with severe mental illness are further impaired by substance use disorders (abuse or dependence related to alcohol or other drugs).¹⁵ Drug abuse can cause individuals to experience one or more symptoms of another mental illness.¹⁶ Additionally, individuals with mental illness may abuse drugs as a form of self-medication.¹⁷ Examples of co-occurring disorders include the combinations of major depression with cocaine addiction, alcohol addiction with panic disorder, alcoholism and drug addiction with schizophrenia, and borderline personality disorder with episodic drug abuse.¹⁸

Mental Illness and Substance Abuse Treatment in Florida

The Florida Mental Health Act, otherwise known as the Baker Act, was enacted in 1971 to revise the state's mental health commitment laws.¹⁹ The Act provides legal procedures for mental health examination and treatment, including voluntary and involuntary examinations. It additionally protects the rights of all individuals examined or treated for mental illness in Florida.²⁰

In the early 1970s, the federal government furnished grants for states to develop continuums of care for individuals and families affected by substance abuse.²¹ The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).²² In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").²³ The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

Additionally, the Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery

¹¹ Id.

¹² *Supra*, note 9.

¹³ Id.

¹⁴ NATIONAL INSTITUTE ON MENTAL ILLNESS, *Dual Diagnosis*, <https://www.nami.org/learn-more/mental-health-conditions/related-conditions/dual-diagnosis> (last visited Mar. 17, 2019).

¹⁵ PSYCHOLOGY TODAY, *Co-Occurring Disorders*, <https://www.psychologytoday.com/conditions/co-occurring-disorders> (last visited Mar. 17, 2019).

¹⁶ *Comorbidity: Addiction and Other Mental Illnesses*, NATIONAL INSTITUTE ON DRUG ABUSE, NIH Publication Number 10-5771, September 2010. <https://www.drugabuse.gov/sites/default/files/rcomorbidity.pdf> (last visited Mar. 18, 2019).

¹⁷ Id.

¹⁸ Id.

¹⁹ Sections 394.451-394.47892, F.S.

²⁰ Section 394.459, F.S.

²¹ Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with Children, Families, and Seniors Subcommittee staff).

²² Id.

²³ Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

support services. Services are provided based upon state and federally-established priority populations.²⁴

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.²⁵

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.²⁶
- **Treatment Services:** Treatment services²⁷ include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.²⁸
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.²⁹

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,³⁰ intervention,³¹ and clinical treatment services.³²

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.³³ "Clinical treatment services" include, but are not limited to, the following licensable service components:³⁴

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.

²⁴ These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

²⁵ DEPARTMENT OF CHILDREN AND FAMILIES, *Treatment for Substance Abuse*, <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification>, (last visited Mar. 16, 2019).

²⁶ *Id.*

²⁷ *Id.* Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.

²⁸ *Supra*, note 25.

²⁹ *Id.*

³⁰ S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, DEPARTMENT OF CHILDREN AND FAMILIES, *Substance Abuse: Prevention*, <http://www.myflfamilies.com/service-programs/substance-abuse/prevention>, (last visited Mar. 16, 2019). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments

³¹ S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

³² S. 397.311(25), F.S.

³³ *Id.*

³⁴ S. 397.311(25)(a), F.S.

- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.

First-Episode Psychosis

The term “psychosis” is used to describe a condition that affects the mind and generally involves some loss of contact with reality. Psychosis can include hallucinations (seeing, hearing, smelling, tasting, or feeling something that is not real), paranoia, delusions (believing something that is not real even when presented with facts), or disordered thoughts and speech.³⁵ Psychosis may be caused by medications or alcohol or drug abuse but can also be a symptom of mental illness or a physical condition.³⁶

Psychosis affects people from all walks of life and is more common than people think. Approximately three out of 100 people will experience psychosis at some time in their lives, often beginning when a person is in their late teens to mid-twenties.³⁷ Researchers are still learning about how and why psychosis develops, but it is generally thought to be triggered by a combination of genetic predisposition and life stressors during critical stages of brain development.³⁸ As such, adolescents are at a greater risk of developing psychosis when facing life stressors such as physical illness, substance use, or psychological or physical trauma.³⁹

Early psychosis, known as “first-episode psychosis,” is the most important time to connect an individual with treatment.⁴⁰ Studies have shown that it is common for a person to experience psychotic symptoms for more than a year before ever receiving treatment.⁴¹ Reducing the duration of untreated psychosis is critical to improving a person’s chance of recovery. The most effective treatment for early psychosis is coordinated specialty care, which uses a team-based approach with shared decision-making that focuses on working with individuals to reach their recovery goals.⁴² Programs that provide coordinated specialty care are often called first-episode psychosis (FEP) programs. Key components of FEP programs include:⁴³

- **Case Management** – Working with the individual to develop problem-solving skills, manage medication and coordinate services.
- **Family Support and Education** – Giving families information and skills to support their loved one’s treatment and recovery.
- **Psychotherapy** – Using cognitive behavioral therapy to learn to focus on resiliency, managing the condition, promoting wellness, and developing coping skills.
- **Medication Management** – Finding the best medication at the lowest possible dose.
- **Supported Education and Employment** – Providing support to continue or return to school or work.
- **Peer Support** – Connecting the person with others who have been through similar experiences.

³⁵ NATIONAL INSTITUTE OF MENTAL HEALTH, *Fact Sheet: First Episode Psychosis*, <https://www.nimh.nih.gov/health/topics/schizophrenia/raise/fact-sheet-first-episode-psychosis.shtml> (last visited Mar. 18, 2019).

³⁶ Id.

³⁷ Id.

³⁸ NATIONAL ALLIANCE ON MENTAL ILLNESS, *What is Early and First-Episode Psychosis?*, July 2016, <https://www.nami.org/NAMI/media/NAMI-Media/Images/FactSheets/What-is-Early-and-First-Episode-Psychosis.pdf> (last visited Mar. 18, 2019).

³⁹ Id.

⁴⁰ Id.

⁴¹ *Supra* note 35.

⁴² Id.; *Supra* note 38.

⁴³ Id.

Peer Specialists

Research has shown that social support provided by peers is beneficial to those in recovery from a substance use disorder or mental illness.⁴⁴ DCF's Florida Peer Services Handbook defines a "peer" as an individual who has life experience with a mental health and/or substance use condition.⁴⁵ There are four primary types of social support provided by peers.⁴⁶

- **Emotional:** where a peer demonstrates empathy, caring or concern to bolster a person's self-esteem. (i.e., peer mentoring or peer-led support groups).
- **Informational:** where a peer shares knowledge and information to provide life or vocational skills training. (i.e., parenting classes, job readiness training, or wellness seminars).
- **Instrumental:** where a peer provides concrete assistance to help others accomplish tasks. (i.e., child care, transportation, and help accessing health and human services).
- **Affiliational:** where a peer facilitates contacts with other people to promote learning of social skills, create a sense of community, and acquire a sense of belonging. (i.e., recovery centers, sports league participation, and alcohol or drug free socialization opportunities).

The most recognized form of peer support is the 12-step programs of Alcoholics Anonymous and Narcotics Anonymous. More recently, as the nation faces a shortage of mental health professionals, peers or peer specialists have been used to fill the gap and assist persons with substance use disorders and mental illnesses.⁴⁷ In Florida, DCF and Medicaid both allow reimbursement for peer support services but only if provided by certified peer specialists.⁴⁸ DCF defines a peer specialist as an individual who:⁴⁹

- Self-identifies as a person who has direct personal experience living in recovery from mental health and/or substance use conditions;
- Has a desire to use his or her experience to help others with their recovery;
- Is willing to publicly identify as a person living in recovery for the purpose of educating, role modeling, and providing hope to others about the reality of recovery; and
- Has had the proper training and experience to work in a provider role.

DCF guidelines recommend that an individual be in recovery for at least two years to be considered for peer training.⁵⁰ In Florida, family members or caregivers can also work and be certified as peer specialists.⁵¹

The Florida Certification Board currently oversees the competency examination and certification process for peer specialists, which requires the individual to have been in recovery for at least two years or have lived experience as a family member or caregiver to another in recovery.⁵² To be certified, one must be at least 18 years of age, have a high school diploma or equivalent, complete 40

⁴⁴ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, CENTER FOR SUBSTANCE ABUSE TREATMENT, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Mar. 17, 2019).

⁴⁵ DEPARTMENT OF CHILDREN AND FAMILIES, *Florida Peer Services Handbook*, 2016, available at: <http://www.dcf.state.fl.us/programs/samh/publications/peer-services/DCF-Peer-Guidance.pdf> (last visited Mar. 17, 2019).

⁴⁶ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, CENTER FOR SUBSTANCE ABUSE TREATMENT, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Mar. 17, 2019).

⁴⁷ Centers for Medicare & Medicaid Services, Guidance Letter to State Medicaid Directors, Aug. 15, 2007, available at: <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD081507A.pdf> (last visited Mar. 17, 2019).

⁴⁸ Department of Children and Families, Agency Analysis of 2019 HB 369, p. 2 (Feb. 8, 2019)(on file with Children, Families, and Seniors Subcommittee staff). Florida's Medicaid program currently covers peer recovery services; DCF allows the state's behavioral health managing entities to reimburse for peer recovery services.

⁴⁹ *Supra* note 45.

⁵⁰ Department of Children and Families, Agency Analysis of 2019 HB 369, p. 2 (Feb. 8, 2019)(on file with Children, Families, and Seniors Subcommittee staff).

⁵¹ *Supra* note 45.

⁵² *Id.*

hours of training, undergo background screening, and pass a competency exam.⁵³ As of January 2019, there are 482 actively certified peer specialists.⁵⁴

Background Screening

Substance Use Disorder and Criminal History

Certain individuals receiving substance abuse treatment may have a criminal or violent history. About 54% of state prisoners and 61% of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse.⁵⁵ Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.⁵⁶ As a result, individuals who have recovered from a substance use disorder or mental illness often have a criminal history.

Some of these individuals with criminal pasts, once in recovery, may contribute to the substance abuse treatment industry as a volunteer, peer, or other employee of a substance abuse treatment program that provides support. Social support services have been shown to facilitate recovery from a substance use disorder or mental illness.⁵⁷ Additionally, these individuals bring many “lived experiences,” including experience navigating the criminal justice system, which give them the ability to assist others in recovery.⁵⁸ However, the crimes committed during the period while these individuals were abusing substances may disqualify them from employment in the substance abuse treatment industry due to Florida’s background screening process.

Background Screening Process

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁵⁹ and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁶⁰

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁶¹ Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.⁶²

⁵³ Id.

⁵⁴ Email from Lindsey Zander, Deputy Director of Legislative Affairs, Florida Department of Children and Families, *RE: Number of Certified Peer Specialists in Florida*, Mar. 4, 2019 (on file with Children, Families, and Seniors Subcommittee staff).

⁵⁵ Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, June 2017, available at <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf> (last visited Mar. 17, 2019).

⁵⁶ *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, NATIONAL INSTITUTE ON DRUG ABUSE, available at https://d14rmqtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited Mar. 17, 2019).

⁵⁷ SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, CENTER FOR SUBSTANCE ABUSE TREATMENT, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited Mar. 17, 2019).

⁵⁸ *Supra* note 45, at p. 10.

⁵⁹ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited Mar. 17, 2019).

⁶⁰ S. 435.04, F.S.

⁶¹ S. 435.05(1)(a), F.S.

⁶² Ss. 435.03(1) and 435.04(1)(a), F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.⁶³ Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.⁶⁴ For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.⁶⁵ For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.⁶⁶ As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.⁶⁷

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:⁶⁸

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, relating to vehicular homicide.
- Section 782.09, relating to killing of an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, relating to assault, if the victim of the offense was a minor.
- Section 784.03, relating to battery, if the victim of the offense was a minor.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Chapter 796, relating to prostitution.
- Section 798.02, relating to lewd and lascivious behavior.

⁶³ S. 435.05(1)(b)-(c), F.S.

⁶⁴ Id.

⁶⁵ S. 435.05(1)(b), F.S.

⁶⁶ S. 435.05(1)(c), F.S.

⁶⁷ S. 435.05(1)(d), F.S.

⁶⁸ S. 435.04(2), F.S.

- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary.
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, relating to obscene literature.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, relating to introduction of contraband into a correctional facility.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to contraband introduced into detention facilities.

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, DCF) to exempt applicants from that disqualification under certain circumstances.⁶⁹ Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,⁷⁰ career offender,⁷¹ or sexual offender (unless not required to register)⁷² cannot ever be exempted from disqualification.⁷³

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification.⁷⁴ However, the individual must first have paid all court-ordered payments (e.g., fees, fines, costs of prosecution or restitution) and three years must have passed since the individual's release from confinement and completion of supervision (e.g., probation) and satisfaction of all other nonmonetary conditions (e.g., community service) before DCF can consider his or her request.⁷⁵

⁶⁹ S. 435.07(1), F.S.

⁷⁰ S. 775.261, F.S.

⁷¹ S. 775.261, F.S.

⁷² S. 943.0435, F.S.

⁷³ S. 435.07(4)(b), F.S.

⁷⁴ S. 397.4073(1)(f), F.S.

⁷⁵ Department of Children and Families, Exemption Package, p. 1 (on file with Children, Families, and Seniors Subcommittee staff).

DCF sends the disqualified employee an exemption packet for the employee to complete to provide information for DCF to use in determining whether he or she meets the statutory standards for an exemption from disqualification.⁷⁶ This packet requests the employee to provide:⁷⁷

- A certified copy from the court file of the petition (filing of information), and final disposition for each disqualifying criminal offenses.
- A copy of the arrest report for each disqualifying criminal offenses. If the report is not available, a statement from the court or law enforcement agency that the record does not exist or has been destroyed is acceptable.
- A copy of arrest reports and dispositions for any additional identified criminal offenses.
- Documentation from the probation department or court documenting release from supervision if probation or parole was given.
- Two or more original, signed letters of recommendation or letters of reference that attest to good moral character.
- Proof of rehabilitation.⁷⁸
- Employment history record.
- Explanation of personal history, e.g., explain what happened with each arrest, current home life, education/training, family members, goals, and community involvement.

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.⁷⁹ Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.⁸⁰ This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.⁸¹ This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.⁸² Evidence that may support an exemption includes, but is not limited to:⁸³

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.

DCF states on the exemption review request checklist form that an applicant's failure to provide all relevant documentation will delay the review process and may leave DCF with insufficient evidence of rehabilitation to support an exemption from disqualification.⁸⁴

⁷⁶ Id.

⁷⁷ Department of Children and Families, CF Operating Procedure 60-18, Personnel: Exemption from Disqualification, Appendix B, (Aug. 1, 2010), (on file with Children, Families, and Seniors Subcommittee staff).

⁷⁸ Proof of rehabilitation may take the form of letters from employers, or community members, records of successful participation in a rehabilitation program, further education or training certifications, special awards of recognition, or information, which indicates that the applicant is not a danger to the safety or well being of others.

⁷⁹ S. 435.07(3)(a), F.S.

⁸⁰ *Supra*, note 77 at 1.

⁸¹ Id.

⁸² Id.

⁸³ Id. at 3-4.

⁸⁴ *Supra*, note 77 at Appendix B.

After DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.⁸⁵ These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.⁸⁶

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted.⁸⁷ The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.⁸⁸

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.⁸⁹ After an exemption request decision is final,⁹⁰ the background screener provides a written response to the applicant as to whether the request is granted or denied.⁹¹

If DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.⁹² However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.⁹³ If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used in deciding to deny the exemption request.⁹⁴ It must also inform the denied applicant of the availability of an administrative review⁹⁵ pursuant to ch. 120, F.S.⁹⁶

Individuals Requiring Background Screening Under Ch. 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services to undergo level 2 background screening. However, certain personnel are excluded from background screening requirements:

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;

⁸⁵ Id. at 5.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ At no point during the evaluation process may an evaluator rely on criminal history reports with an effective date that is more than 60 days old. If the most recent criminal history report is more than 60 days old at the time of review, new criminal history reports must be generated prior to the final decision being made.

⁹¹ *Supra*, note 77 at 5.

⁹² Id. at 6.

⁹³ Id.

⁹⁴ Id.

⁹⁵ All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.

⁹⁶ *Supra*, note 77 at 6.

- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections in a substance abuse service program who have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.⁹⁷

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. For example, DCF may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.⁹⁸ DCF may also grant exemptions for service providers which treat adolescents 13 years of age and older, whose background checks indicate certain drug crimes⁹⁹ without the usual three-year waiting period for felonies.¹⁰⁰

Similarly, if five or more years or more have elapsed since the most recent disqualifying offense, employees may work with adults with substance use disorders until DCF makes a final determination regarding the request for an exemption from disqualification.¹⁰¹ These individuals must work under the supervision of a qualified psychologist, clinical social worker, marriage and family therapist, mental health counselor, or a master's level certified addiction professional until DCF makes a final determination regarding the request for an exemption from disqualification.

Regarding recovery residences, ss. 397.487 and 397.4871, F.S., require level 2 background screening for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. DCF may exempt an individual from the disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program.¹⁰²

Effect of the Bill

First-Episode Psychosis

The bill defines FEP programs as evidence-based programs that use intensive case management, individual or group therapy, supported employment, family education and supports, and appropriate psychotropic medication to treat individuals 15 to 30 years of age who are experiencing early indications of serious mental illness, especially first-episode psychosis.

The bill establishes FEP programs as an essential element of a coordinated system of care and requires DCF to conduct an assessment of the availability of and access to FEP programs in the state, including any gaps in availability or access that may exist. This assessment must be included in DCF's annual report to the Governor and Legislature on the assessment of behavioral health services in the state.

Peer Specialists

Currently there is no statutory definition of or requirements for a peer specialist as it relates to mental health and substance abuse. The bill creates a definition for peer specialists consistent with DCF's guidelines and guidance documents, and requires peer specialists to be certified, except in limited circumstances, to provide DCF-funded support services. The bill defines "peer specialist" as a person who has been in recovery from a substance abuse disorder or mental illness for at least two years and who uses his or her lived experience to deliver services in behavioral health settings to support others

⁹⁷ S. 435.07(2), F.S.

⁹⁸ S. 397.4073 (4)(c), F.S.

⁹⁹ Specifically, ss. 817.563, 893.13, or 893.147, F.S.

¹⁰⁰ S. 397.4073 (4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older; as well as personnel who work exclusively with adults.

¹⁰¹ S. 397.4073(1)(f), F.S.

¹⁰² S. 397.4872, F.S.

in their recovery, or as a person who has two years' experience as a family member or a caregiver of a person with a substance abuse disorder or mental illness. The bill allows a peer specialist who is not yet certified to provide support services for up to a year while he or she is working towards certification; such peer specialists must be supervised by a qualified professional or a certified peer specialist with at least three years of full-time experience at a licensed behavioral health organization.

The bill requires DCF to approve training and continuing education programs for peer specialist certification. DCF must designate one or more credentialing entities that have met nationally-recognized standards for developing and administering certification programs to handle the training and certification of peer specialists.

The bill also adds the use of peer specialists to the essential elements of a coordinated system of care to treat individuals recovering from substance use disorder or mental illness.

Background Screening

Peer Specialists

Beginning July 1, 2019, peer specialists will be subject to level 2 background screenings, and, along with recovery residence owners, directors, chief financial officers, and clinical supervisors, will also be subject to background screenings for the offenses in s. 408.809, F.S., in addition to those in ch. 435, F.S.

In addition to the offenses listed in s. 435.04, F.S. for level 2 screenings, s. 408.809(4), F.S. requires screening for the following offenses or any similar offense of another jurisdiction:

- Any authorizing statutes, if the offense was a felony.
- Chapter 408, F.S., if the offense was a felony.
- Section 409.920, F.S., relating to Medicaid provider fraud.
- Section 409.9201, F.S., relating to Medicaid fraud.
- Section 741.28, F.S., relating to domestic violence.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, F.S., relating to false and fraudulent insurance claims.
- Section 817.481, F.S., relating to obtaining goods by using a false or expired credit card or other credit device, if the offense was a felony.
- Section 817.50, F.S., relating to fraudulently obtaining goods or services from a health care provider.
- Section 817.505, F.S., relating to patient brokering.
- Section 817.568, F.S., relating to criminal use of personal identification information.
- Section 817.60, F.S., relating to obtaining a credit card through fraudulent means.
- Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, F.S., relating to forgery.
- Section 831.02, F.S., relating to uttering forged instruments.
- Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes.
- Section 831.30, F.S., relating to fraud in obtaining medicinal drugs.
- Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
- Section 895.03, F.S., relating to racketeering and collection of unlawful debts.
- Section 896.101, F.S., relating to the Florida Money Laundering Act.

Background Screening Generally for Substance Abuse Personnel

In addition, the bill expands the crimes for which an individual may receive an exemption from disqualification without the statutorily imposed waiting period, if they are working with adolescents 13 years of age and older and adults with substance use disorders, to include:

- Prostitution.
- Burglary (3rd degree felony).
- Grand theft of the third degree (3rd degree felony).
- Forgery (3rd degree felony).
- Uttering forged instruments (3rd degree felony).
- Related attempt, solicitation, or conspiracy crimes.

For individuals who seek an exemption from disqualification for employment in substance abuse treatment following a level 2 background screening, the bill requires DCF to render a decision on the application for exemption from disqualification within 60 days after DCF receives the complete application. Additionally, the bill allows individuals to work under supervision for up to 90 days while DCF evaluates their applications for an exemption from disqualification, so long as it has been five or more years, or three or more years in the case of a certified peer specialist or individual seeking certification as a peer specialist, since the individuals have completed all non-monetary conditions associated with their most recent disqualifying offense.

The bill also gives AHCA or DCF, as appropriate, the authority to grant an exemption from disqualification to work solely in mental health or substance use treatment programs and facilities, in recovery residences, or in those programs or facilities that treat co-occurring substance use and mental health disorders, to an employee otherwise disqualified from employment under s. 435.07, F.S.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 394.455, F.S., relating to definitions.
- Section 2:** Amends s. 394.457, F.S., relating to operation and administration.
- Section 3:** Amends s. 394.4572, F.S., relating to screening of mental health personnel.
- Section 4:** Amends s. 394.4573, F.S., relating to coordinated system of care; annual assessment; essential elements; measures of performance; system improvement grants; reports.
- Section 5:** Amends s. 397.311, F.S., relating to definitions.
- Section 6:** Amends s. 397.4073, F.S., relating to background checks of service provider personnel.
- Section 7:** Creates s. 397.417, F.S., relating to peer specialists.
- Section 8:** Amends s. 435.07, F.S., relating to exemptions from disqualification.
- Section 9:** Amends s. 212.055, F.S., relating to discretionary sales surtaxes; legislative intent; authorization and use of proceeds.
- Section 10:** Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
- Section 11:** Amends s. 394.496, F.S., relating to service planning.
- Section 12:** Amends s. 394.9085, F.S., relating to behavioral provider liability.
- Section 13:** Amends s. 397.416, F.S., relating to substance abuse treatment services; qualified professional.
- Section 14:** Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
- Section 15:** Amends s. 440.102, F.S., relating to drug-free workplace program requirements.
- Section 16:** Amends s. 464.012, F.S., relating to licensure of advanced practice registered nurses; fees; controlled substance prescribing.
- Section 17:** Amends s. 744.2007, F.S., relating to powers and duties.

Section 18: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact to DCF and AHCA is likely insignificant as they currently process level 2 background screenings for personnel and volunteers working in mental health treatment programs or facilities and in recovery residences. The addition of peer specialists is not expected to be a significant workload increase.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some mental health and substance abuse personnel may no longer be able to work in certain settings based on the new disqualifying offenses under the bill. However, others will benefit from new professional opportunities, and individuals in recovery will benefit from an increased quality of services provided.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DCF and AHCA have sufficient rulemaking authority in current law to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES